No. 18

Supreme Court of the United States

OCTOBER TERM, 1959

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, as TRUSTEES of the UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND,
Petitioners,

v.

BENEDICT COAL CORPORATION,

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITIONERS' BRIEF

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PETITIONERS' BRIEF

I.

OPINIONS BELOW

The opinion of the Court of Appeals[1] is reported in 259 F. 2d 346, and appears in the present printed record at pages 762 *et seq.*[2]

[1] The United States Court of Appeals for the Sixth Circuit is sometimes referred to herein as the "Court of Appeals" or the "Sixth Circuit."

[2] Herein the abbreviation "R" refers to the printed record.

The opinion of the District Court[3] on motion for summary judgment, the judgment of the District Court and the District Court's order overruling the petitioners' motion to amend that judgment are not reported but are set forth beginning at pages R. 68a, R. 75a and R. 85a, respectively.

II.

JURISDICTION

Jurisdiction of this Court to review the judgment of the Court of Appeals is invoked under the provisions of 28 U. S. C. A. Sec. 1254(1).

Judgment of the Court of Appeals was entered in this case on September 26, 1958. Petition for writ of certiorari was filed in this Court on December 5, 1958. This Court granted certiorari on February 24, 1959, U. S. , 3 L. ed. 2d 570, S. Ct. (R. 780).

III.

STATUTES INVOLVED

This action involves Sections 301 and 302 of the Labor Management Relations Act, 1947[4] (c. 120, Title III, 61 Stat. 156, 157; 29 U. S. C. A. Sections 185 and 186). The pertinent portions of the Act are set forth as Appendix I to this brief.

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[3] The District Court referred to herein, unless otherwise indicated, is the United States District Court for the Eastern District of Tennessee.

[4] Herein called the "Act".

IV.

QUESTION PRESENTED

In an action by the Trustees of an irrevocable trust created under a collective bargaining agreement entered into by bituminous coal operators and United Mine Workers of America [5] authorized by Section 302(c)(5) of the Act for the benefit of the employees of all the employer-settlors of the trust, which action is brought against one individual employer-settlor seeking to recover moneys due the trust under trust provisions of collective bargaining agreements which expressly vested title to such moneys in the Trustees, may such employer-settlor set off against such moneys damages sustained by it alone because of alleged conduct on the part of the said labor organization in violation of the Act and of the collective bargaining agreements?

The United States Court of Appeals for the Sixth Circuit concurred with the District Court in permitting such a set off, petitioners having contested that conclusion in both of said Courts.

V.

STATEMENT OF THE CASE

The question here presented arises from an interpretation of certain provisions of the Act and the provisions of collective bargaining agreements entered into between bituminous coal operators and UMW pursuant to authorization granted by the Act's Section 302(c)(5).

This action was commenced by the Trustees of the United Mine Workers of America Welfare and Re-

[5] United Mine Workers of America will be referred to herein as "UMW."

tirement Fund in the District Court against Benedict Coal Corporation, to recover trust property exceeding $75,000 on coal mined by Benedict.

The plaintiffs had become such Trustees as a consequence of provisions of the National Bituminous Coal Wage Agreement of 1950 which provisions were carried forward in amendments to that Agreement in 1951 and again in 1952 (R. 88a, 118a, 108a).[6] Benedict, along with numerous other coal operators and associations responsible for the production of a great preponderance of the nation's bituminous coal, had executed said Agreements with UMW. In the 1950 Agreement, in addition to attempting to establish for the United States' bituminous coal industry a mine safety program, workmen's compensation and occupational disease benefits, wage and hour rules, vacation pay, etc., the parties also created the United Mine Workers of America Welfare and Retirement Fund (herein called "Fund") pursuant to the Act's Section 302(c)(5). To the Trustees of the trust, each signatory coal operator, including Benedict, therein agreed to pay a specified sum "on each ton of coal produced for use or for sale" (R. 94a). The Trustees designated in that instrument were required to administer the trust for those persons entitled to receive its benefits, namely, employees of the signatory operators, their families and dependents as set forth in the 'agreement' (R. 95a). While under agreements immediately antecedent to the 1950 Agreement, *only title to moneys paid into* a predecessor trust vested in

[6] The National Bituminous Coal Wage Agreement of 1950 will herein be called the "1950 Agreement"; that Agreement as amended in 1951, the "1951 Agreement"; and the 1950 Agreement as amended in 1952, the "1952 Agreement".

the Trustees thereof,[7] but the 1950 Agreement specifically provides that "*Title to all the moneys paid into and or due and owing said Fund shall be vested in and remain exclusively in the Trustees of the Fund,*" as an irrevocable trust. (R., 96a). These provisions were expressly carried forward in the 1951 and 1952 Agreements (R. 118a, 108a).

By answer Benedict denied liability, contending that the Trustees were a beneficiary to the 1950 and 1952 Agreements, that the Trustees were therefore bound by defenses available against UMW and that UMW had breached said Agreements by causing strikes in violation of the Agreements and in violation of the Labor-Management Relations Act, 1947 (29 U. S. C. A. 187), damaging Benedict in excess of the amount sought by the Trustees. Benedict further denied liability on the theory that the Trustees were barred from maintaining the action by virtue of an alleged breach of contract or trust on their part in failing to pay a certain type of benefits provided for in the Agreements (R. 17a).

In addition to its answer and counterclaim Benedict filed a "cross-claim" against UMW and District 28 seeking judgment against them for the damages it alleged it sustained and which it asserted as a defense to the Trustees' action. The basis of the cross-action was that the UMW and District 28 had caused some eleven strikes, all which were allegedly in violation of the 1950 and 1952 Agreements and two of which were

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[7] The antecedent agreement referred to is the National Bituminous Coal Wage Agreement of 1947. The exact language of that agreement here contrasted with the 1950 Agreement is as follows: "Title to all the moneys *paid into said Fund* shall be vested in and remain exclusively in the Trustees of that Fund. . . ." (R. 755).

allegedly in violation of Section 303 of the Labor-Management Relations Act, 1947 (R. 25a, 37a, 41a, 61a).

At the trial, the District Court instructed the jury, *inter alia*, that if it found that there was a breach of the Agreements, either by UMW and or District 28, or that either of them violated any of the secondary boycott provisions of the Act, and that as a result Benedict sustained damages, the jury should set off such damages against any amount awarded the Trustees (R., 733a).

The jury found that the Trustees were entitled under the collective bargaining agreements to recover from Benedict trust property amounting to $76,504.21, which sum was the amount of royalty the parties stipulated Benedict had not paid (R. 151a). The jury further found that Benedict was entitled to set-off against that total, the amount of $81,017.68, the latter sum being the amount which the jury found that Benedict was entitled to recover in its cross-claim for damages against UMW and District 28 (R. 74a).

The District Court thereupon entered judgment against UMW and District 28 for $81,017.68 in favor of Benedict and ordered execution for such amount to issue, said sum to be paid into the registry of the Court. Insofar as the judgment rendered in favor of the Trustees is concerned, the judgment entered by the District Court reads as follows:

> "It is further ordered that said sum of $81,017.68 be paid into the registry of the Court to be disbursed by the clerk in accordance with instructions appearing below.
>
> "It is further ordered that said Trustees, in accordance with the verdict rendered in their

favor, have and recover of Benedict Coal Corporation the sum of $76,504.26, said recovery to be had in the manner following: From the aforesaid $81,017.68 ordered paid into the registry of the Court, that the sum of $76,504.26 be paid to said Trustees. That the difference between $76,504.26 and $81,017.68 be paid to Benedict Coal Corporation" (R., 76a).

Thereafter the Trustees unsuccessfully moved the District Court to have the judgment provide therein for interest thereon from the date of institution of suit and also for the issuance of execution against Benedict for the collection of the entire amount of the Trustees' judgment and to eliminate from the judgment the provision that the recovery awarded the Trustees be satisfied out of Benedict's judgment against UMW and District 28 (R., 82a). The District Court assigned two reasons for denying the motion:

(1) Its determination that the Trustees were third-party beneficiaries to the Agreements and as a result the sum certain owing to them as royalties was rendered uncertain by possibility of set off because of violation by UMW and District 28 of certain provisions of the Agreements, and

(2) Because of its determination that the Trustees were third-party beneficiaries to the Agreements, they have a right to unconditional judgment against Benedict for only such sum as any judgment rendered in their favor for royalties due exceeds damages adjudged against UMW and District 28 and inasmuch as under the verdict of the jury no such excess exists an unconditional judgment against Benedict will not be entered in favor of the Trustees (R., 85a).

It was the position of the Trustees, both in the District Court and in the Court of Appeals, that under the several Agreements title to the trust *res*—the obligation to pay the royalty—passed to the Trustees immediately upon coal production, so that any claim which Benedict might have had against UMW and/or District 28 could not and may not be utilized as a set-off against the Trustees' right to recover such trust *res*, title to which had vested in the Trustees. The action of the Trustees therefore was one to recover trust property and was immune from set offs or claims which Benedict might have against UMW and/or District 28.

The Court of Appeals held that the obligation by Benedict to make payments to the Trustees was dependent upon performance by UMW and District 28 of their obligations to Benedict [8] and consequently they were third-party beneficiaries of the Agreements and subject to the defenses arising from the conduct of UMW and District 28 (R. 772-3). Reversing the judgment of the District Court in the Trustees' case and also the judgment in the UMW cross-action and remanding the latter for a redetermination of the amount of damages Benedict is entitled to recover,[9] the Court

[8] Though the Court of Appeals held that Benedict was entitled to set-off against the Trustees for acts constituting contract violations on the part of UMW or District 28, the Court held that Benedict was not entitled to a set-off against the Trustees for acts committed by individual employees and not imputable to the UMW or District 28. The basis of this conclusion was that acts on the part of individuals could not amount to a breach of contract (R. 773). This question is no longer material to the case.

[9] The District Court in effect found that eleven strikes involved in the case constituted breaches of contract and, in addition, that two of such strikes constituted violations of the Labor Management Relations Act, 1947. The Court of Appeals held that there

of Appeals directed that the Trustees' judgment "will then be amended by the District Court to allow execution and interest on that part of the said judgment which is in excess of the set-off in favor of Benedict as so redetermined" (R. 762, 774). The judgment as entered by that Court (R. 760) directs that the District Court judgment be set aside "for amendment" in accordance with the opinion.

VI.

ARGUMENT

A. Where employers and a labor organization executed a collective bargaining agreement, creating an irrevocable trust fund as authorized by Section 302(c)(5) of the Act for the benefit of the employees of all such employers, whereby moneys would be paid into such fund by the employers in amounts determined by an employer's individual unit production, with title to all moneys paid into and or due and owing the fund vested in the trustees thereof, an employer who operates under the collective bargaining agreement may not set-off damages sustained by reason of breach of the agreement or violation of the Act by the labor organization against the amount due the fund on the employer's production.

(1) The collective bargaining agreement explicitly provides that unpaid royalties become impressed with the trust upon the coal production from which the royalty is computed. Non-performance of a contractual obligation by the union or the violation of the Act by the union does not alter the legal obligation to pay the trust res resulting from coal actually produced.

Trustees insist that they maintained the present action as trustees seeking to recover trust property, title to which has vested in them, and not simply as third-party beneficiaries to a contract.

was evidence in the record to support the jury's determination that eight of the eleven strikes constituted breaches of contract. The Court of Appeals found it unnecessary to consider whether two of the eight strikes also violated Section 303 of the Act (R. 767).

The fundamental error in the holding of the Trial Court is that the Court considered the Trustees in this action as third-party beneficiaries to the Agreements. It was upon the basis that the Trustees were such beneficiaries that the Trial Court found that the Trustees' claim was subject to a set-off by virtue of the alleged breach of contracts and violation of the Act, on the part of UMW and District 28. The Court of Appeals reached the same conclusion.

The Trustees contend with respect to the unpaid royalties—the obligation upon which they seek judgment —that such unpaid royalties, by virtue of the language of the several Agreements and the conduct of the parties thereunder, are trust property in the hands of the employer-settlor, Benedict, and that such trust property in the hands of Benedict became impressed with a trust, and title vested in the Trustees, upon the production of coal from which the obligation is computed.

The trust instrument, it will be recalled, required that Benedict, as an operator signatory, pay into the Fund a designated sum "on each ton of coal produced for use or for sale" (R. 94a). Thus, the sole condition which Benedict, as an employer-settlor, placed upon the creation of the trust *res* was the production of coal.

Unlike trust instrument provisions contained in the 1947 Agreement (Exhibit 15, R. 126a, 755a), which had provided merely that:

> "*Title* to all the moneys *paid into* said Fund shall be vested in and remain exclusively in the Trustees of the Fund, and it is the intention of the parties hereto that said Fund shall constitute an irrevocable trust",

in executing the 1950 Agreement, the contracting parties, who included Benedict, added that title to all moneys *"due and owing said Fund"* should be vested exclusively in the Trustees. The 1950 Agreement explicitly declared that (R., 96a)

> "Title to all the moneys paid into *and or due and owing said Fund.* shall be vested in and remain exclusively in the Trustees of the Fund, and it is the intention of the parties hereto that said Fund shall constitute an irrevocable trust . . ."

Thus, these added words, namely, "and or due and owing said Fund", are indeed meaningful and require the determination that simultaneously upon the production of coal the obligation to pay Trustees was created, and title to that obligation vesting exclusively in the Trustees, such unpaid obligation became property impressed with a trust in Benedict's hand as an employer-settlor, insofar as Benedict and the Trustees are concerned.

Since under the 1947 Agreement title vested in the Trustees only as to "moneys *paid into* said Fund", the difference in the language of the 1947 Agreement and the comparable trust instrument provisions in the 1950 Agreement and as carried forward in the 1951 and 1952 Agreements—"moneys paid into and or due and owing"—shows an unmistakable intent of the parties to create a trust at the time a particular obligation became computable.[10] Unless the words so added to the trust instrument are given such meaning, it follows that the inclusion of such language is a mere nullity.[10]

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[10] Consideration of the difference in the language of the two agreements should be given in light of the decision of the Court in *Lewis* v. *Jackson & Squire*, D. C., Ark., 1954, 86 F. Supp. 354. That action was brought by the Trustees under the 1947 Agreement to recover an unpaid obligation due the Fund. Giving emphasis to the language of the 1947 Agreement quoted above in

It had been implicit in the Seventh Circuit's *Lewis v. Quality Coal Corp.*, (CA-7, 1957) 243 F.2d 769, that moneys due but unpaid by Quality to the Fund's Trustees were held upon a trust. On August 18, 1959, the Seventh Circuit, in a second case against Quality [Lewis v. Quality Coal Corp., (CA-7) ..... F.2d .....], interpreting specifically the Agreement's language that "Title to all moneys paid into and or due and owing said Fund shall be vested in and remain exclusively in the Trustees of the Fund", expressly upheld the position herein asserted by the Trustees by declaring that

> "Under this language a trust was created, the corpus of which was any money transferred or delivered by Quality to the trustees for the purpose of the agreement *or which Quality became obligated to transfer to the trustees for that purpose. We hold that a trust was created.*" (Emphasis supplied.)

Other well-reasoned authorities support Trustees' position.

The proposition is stated in 89 C. J. S., Trusts, sec. 24, p. 741, in the following language:

> "It has been held . . . that a declaration of trust of property executed before the acquisition of the property, but which is subsequently acquired, does not fail for want of the requisite subject matter, *but that the instrument takes full effect when the subsequent title vests in the declarant.*" (Emphasis supplied.)

In comment "k" under section 26, p. 85, of the *Restatement of the Law of Trusts*, it is said:

> "k. . . . Thus, if a person executes a declaration of trust of certain property not at the time owned

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the text of this brief and to the fact that the action involved money which had not been paid into the Fund, the Court held that such money was not a part of a trust nor would it be a part of the trust until paid.

> by him and he thereafter purchases property of that description, the act of acquiring the property coupled with the earlier declaration of trust may be a sufficient manifestation of an intention to create a trust at the time of the acquisition of the property."

That a trust may arise automatically upon acquisition of the *res* is stated in *Grubb* v. *General Contract Purchase Corporation*, (CA-2, 1938) 94 F. 2d 70, 73, as follows:

> ". . . it is also true that a declaration of trust may precede acquisition of the res, and attach to it thereafter."

Other authorities setting forth the principle here discussed are:

Merritt Oil Corporation v. *Young*, (CA-10, 1930) 43 F. 2d 27, 29-30;

Brainard v. *Commissioner of Internal Revenue*, (CA-7, 1937) 91 F. 2d 880, 882-883;

Universal Ins. Co. v. *Steinbach*, (CA-9, 1948) 170 F. 2d 303, 305.

As between Benedict and the Trustees,[11] the contracting parties' intention, as previously indicated, was that obligations due and owing the Fund, as well as moneys paid into it, would be impressed with the trust, and that creation of the trust was simultaneous

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[11] While in the recent case of *U. S.* v. *Embassy Restaurant, Inc.*, U. S. , 3 L. ed. 2d 601, this Court held that unpaid contributions due a welfare fund were not "wages due to workmen" within the priority section of the Bankruptcy Act, the instant case does not concern the question of priority between Trustees' claim and those of third party creditors, as did the *Embassy* case.

with the production of coal by which the amount of the royalty obligation, the trust *res*, was computable. This intention of the parties is clearly reflected in the language of the trust instrument itself which commands that "there shall be paid into such Fund by each operator signatory hereto" a designated sum "on each ton of coal produced for use or for sale" (R. 94a).

Thus, the Sixth Circuit's conclusions that Benedict's "obligation . . . to the Trustees was dependent upon performance by the Unions of their obligations" and therefore the Trustees were third party beneficiaries, "subject to the defenses arising from breaches by the Unions" (R. 772-3) are emasculatory of the trust agreed to by the Agreements' employer-settlors, including Benedict. An error of the Court of Appeals' reasoning is readily discernible when, despite the trust provisions' clear and positive language that "moneys . . . due and owing . . . shall be vested" in the Trustees, the Court of Appeals rejected Trustees' position because that would mean that the trust property became " 'due and owing' as soon as the coal left the ground" (R. 772).

The Court of Appeals recognized that if title to the royalties passed to the Trustees immediately upon the production of coal, the Trustees would be seeking to recover property held upon a constructive trust and would be immune from set-offs. The Court held, however, that royalties are "due and owing" only where the Unions have fully performed their agreement, notwithstanding the express covenant of the Agreement that production of coal is the sole condition precedent to the creation of the trust *res*. The Sixth Circuit has not only reformed the parties' agreement, but it has

violated the rule that "Express stipulations cannot, in general, be set aside or varied by implied promises". 12 Am. Jur., Contracts, Section 239, p. 768; *Ferroline Corp.* v. *General Aniline & Film Corp.*, (CA-7), 207 F. 2d 912, 926.

The parties to the National Bituminous Coal Wage Agreement of 1950 intended moneys due the trust to become impressed with the trust upon the production of coal. The effect of the Court of Appeals' decision is to dissipate entirely or postpone indefinitely any moneys becoming due the trust following the slightest breach of contract on the part of the Unions, either prior or subsequent to the production of coal upon which royalty obligation was computable. And this is true, under the Court of Appeals' decision, even though the unpaid royalties represent part of the consideration which Benedict agreed to pay for the work of its employees who produced the coal. (*United States* v. *Carter*, 353 U. S. 210), and even though Benedict permitted the work to be performed without notice to its employees, the Trustees, or to the Unions that it would not regard royalties being due the trust on coal which such work produced.

In denying to the Trustees their unconditional right to such trust property by refusing them the process of execution, both the District Court and the Court of Appeals have thus given aid to an employer-settlor admittedly guilty of breaching his covenant to pay in accordance with the Agreements. Further, it must be remembered that herein trust property which Benedict agreed to deliver in 1950 is now withheld because of alleged strike activity occurring even as late as 1953. Indeed, under the Sixth Circuit's thesis, trust property which Benedict agreed to but did not deliver

in 1950 could be withheld for strike activity occurring even as late as 1959 or thereafter.

It is not amiss at this juncture to point out that the trust property sought by Trustees in this action is, as the trust provisions expressly recite, impressed with an "irrevocable trust" (R. 96a) for delineated "benefits to employees of said Operators, their families and dependents" (R. 95a) and not limited to Benedict's employees alone. Indeed the Court of Appeals recognized that Benedict's employees had only a "potential" and not a "present 'interest' in the trust res" (R. 773). Yet, to deprive Trustees of an unconditional judgment for recovery of the trust *res*, especially when Benedict's obligation to deliver to the Trustees the trust property is a transaction wholly separate from situations upon which Benedict's claims against UMW and District 28 are predicated, effectuates a penalty upon employees of all other employer-settlors as "potential" beneficiaries, since the assets from which the Trustees must satisfy and fulfill their fiduciary obligation toward all employees covered by the Agreement would be necessarily reduced. Further, since employee coverage under such Agreements includes those of Benedict, the effect of the Sixth Circuit's decision is to impose on the royalties paid into the Fund by other employer-settlors the burden of Trustees' fiduciary obligations for Benedict's employees.

We, of course, do not contend that Benedict may not sue the Unions for any breach of contract they may have committed. We do contend, however, that the Sixth Circuit's conclusion that damages recovered against the Unions may be offset against the obligations "due and owing" by Benedict to Trustees, is clearly erroneous.

Benedict declared its intention to create a trust upon the production of coal and agreed that title to moneys due the trust would be vested in the Trustees even before actual payment of such moneys to them. Furthermore, Benedict operated under such agreement without giving the slightest indication of an intention to repudiate the agreement. In fact, after a large part of the obligation here sought to be recovered by the Trustees came due, Benedict reaffirmed its previous declaration by executing the National Bituminous Coal Wage Agreement of 1952, and by making actual payments of royalties to the Trustees throughout the period involved in this litigation (R. 149a-51a).

To say a trust was not impressed on Benedict's obligation to the Trustees as between Benedict and the Trustees is to ignore the provisions of the trust agreement and the conduct of the parties with respect thereto.

(2) The allowance of the set-off is erroneous because it effects the revocation of an irrevocable trust.

The obligation which the Trustees seek to recover is, for the reasons stated in the preceding section of this brief, impressed with a trust. May Benedict by way of set-off for alleged contractual breach by the union signatory to the contract containing the irrevocable trust provisions effect a revocation of the trust which has been impressed upon this obligation?

The trust agreement expressly provides that (R. 95a):

"... this Fund is an irrevocable trust ..."

It also expressly provides that (R. 96a):

"Title to all the moneys paid into and or due and owing said Fund shall be vested in and re-

> main exclusively in the Trustees of the Fund, *and it is the intention of the parties hereto that said Fund shall constitute an irrevocable trust . . .*" (Emphasis supplied.)

The obligation here in question being impressed with a trust and the trust being, by the agreement of the parties, an irrevocable trust, it is the position of the Trustees that Benedict may not effect a revocation thereof by way of set-off.

In the *Restatement of the Law of Trusts*, Sec. 330, at page 984, the following statement is made:

> "The settlor has power to revoke the trust if and to the extent that by the terms of the trust he reserves such a power."

The foregoing rule is supported by an unbroken line of authorities.

In *Bogert on Trusts*, Vol. 4, Part 2, Sec. 993, p. 429, the following statement is made:

> "If a trust has been created, it results in the vesting of property rights in the cestuis with regard to the trust subject-matter. If these property rights were absolute and unconditional, they cannot be taken from their owners without action on the part of such owners by way of surrender or conveyance. The creator of those property rights, whether for a consideration or voluntarily, cannot resume his former position as owner merely because of a change of mind or a feeling that he has unwisely given or conveyed for a consideration."

The Court of Appeals for the Sixth Circuit in the case of *Fricke* v. *Weber* (CA-6, 1944), 145 F. 2d 737, in considering the right of a settlor to revoke a trust, said (page 739):

> "As no reservation was made of a right to alter or revoke the trust, under both common law and the Ohio decisions it was irrevocable without the consent of the beneficiary."

In *Scott on Trusts*, Vol. III, Sec. 330.1, p. 2394, the following statement is made:

> "Where the creation of a trust is evidenced by a written instrument which purports to include the terms of the trust, and there is no provision in the instrument expressly or impliedly reserving to the settlor power to revoke the trust, the trust is irrevocable."

The conclusion of the Court of Appeals is at variance with established principles governing the administration of trusts; it is likewise at variance with the intent of the parties entering into the subject collective bargaining agreements; and it is erroneous. Pertinently, the Sixth Circuit has cited no decisional law to support its conclusion.

(3) The Court of Appeals' conclusion that Benedict's obligation to the Trustees was dependent upon union performance is based upon a misconception of the Agreement.

In its rejection of Trustees' contention, the Court of Appeals reasoned that "To thus construe the royalty provisions as being independent of the obligations assumed by the Unions would, however, be inconsistent with the agreement considered as an entirety", pointing to its language that "This Agreement is an integrated instrument and its respective provisions are interdependent . . ." (R. 772). In so reasoning, it is evident that the Court of Appeals misconceives the purport of the Agreement's language.

Initially, as it has already been shown, the trust instrument under which the Trustees assert their right to the trust *res* constituted the Fund "an irrevocable

trust" and, secondly, Benedict as an employer-settlor imposed but one condition upon the trust *ex's* creation, i.e., the production of coal by employees. Yet, in arguing, as the Court of Appeals does (R. 772), that the "provision requiring that the parties resort to the" grievance procedure "for the settlement of local disputes" is a "part of the consideration of this contract", the Court imposes upon the trust and writes into the trust instrument itself a condition which the parties did not impose and which in fact collides with and is offensive to the trust instrument's language obligating Benedict to pay a certain sum "on each ton of *coal produced* for use or for sale" into the Fund which Benedict agreed was "an irrevocable trust". Certainly, agreement that processing of disputes through grievance machinery procedures is "part of the consideration of this contract" is not synonymous with or tantamount to a condition that failure so to process disputes warrants a set-off against the trust settlor's unconditional promise to pay into the Fund a royalty on each ton produced for use or for sale.

In an examination of the Agreement's language that the contract is an integrated one and its provisions interdependent, the Court must be mindful that it is an industry-wide agreement executed by numerous signatory operators competing with each other, and who, executing a contract with the collective bargaining agent of their respective employees would of necessity, because of such competition, demand the assurance that the agreement signed was the entire agreement which the union had signed with each contracting operator and, likewise, that no provision expressed in the national or industry-wide agreement had been deleted for the benefit of any one or more of such signatories.

It is well settled by now that collective bargaining agreements create rights which are uniquely personal to a contracting union, to the employees, and to trustees of welfare funds created pursuant to and under authority of the Act's Section 302(c)(5). *Assn. of Westinghouse Salaried Employees* v. *Westinghouse Elec. Corp.*, 348 U. S. 437; *International Ladies' Garment Workers Union, AFL* v. *Jay-Ann Co., Inc.*, (CA-5, 1956), 228 F. 2d 632; *United Steel Workers of America* v. *Pullman-Standard Car Mfg. Co.*, (CA-3, 1957), 241 F. 2d 547. That the language under consideration was never intended or devised to be interpreted so as to require union performance as a condition precedent where trustees or employees were asserting some uniquely personal claim under the contract is made obvious by considering a situation where employees were suing an employer for wages or vacation pay, payment of which is required by the contract. Certainly it would shock the conscience and all sense of justice to permit an employer to defend and destroy the wage earners' claim for services rendered on the ground that the contracting union had defaulted in the performance of an obligation assumed by the union upon the premise that the bargaining agreement was an integrated one and its provisions interdependent. This is equally applicable to the instant situation where Trustees, as this Court stated in the *Carter* case (353 U. S. 220) "stand in the shoes of the employees . . . claiming recovery for the sole benefit of the beneficiaries of the fund, and those beneficiaries are the very ones who have performed the labor".

(4) The allowance of a set-off of damages caused by a breach of contract by a union against unpaid trust obligations is erroneous because in conflict with Congressional purpose.

Regardless of whether the trust was impressed upon the moneys due the Trustees prior to actual payment thereof into the Fund, the Trustees contend that the allowance of a set-off against unpaid royalties was erroneous because it conflicts with Congressional purposes as manifested in the Act's Section 301 and Section 302(c)(5).

More specifically the Trustees contend that the decision of the Court of Appeals is erroneous in that its legal implication is to effect a satisfaction of a union obligation out of assets held in trust for the benefit of employees and their families.

It is clear that the United Mine Workers of America, though it is the labor organization whose efforts brought the Fund into being, has no interest in royalties whether paid or unpaid. This very point was considered in *Lewis v. Quality Coal Corp.* (CA-7, 1957), 243 F. 2d 769, 772, where the Court said:

> "Defendant urges also that United Mine Workers of America, having signed the contract, is a necessary party, but the record discloses that the UMWA has no title to the money in the fund, or right to recover same. It is in no way interested therein, except to see that the trustees perform their trust duties. The Act has been so interpreted in *United Marine Division, etc. v. Essex Transportation Co.*, 3 Cir., 216 F. 2d 410, 412. No person is legally interested in this controversy except plaintiffs, who, as trustees, claim the right to recover, and defendant who has agreed to pay the royalties demanded."

In *United States v. Carter*, 353 U.S. 210, it was said that unpaid contributions sought to be recovered by

trustees were in the nature of compensation due for the labor of employees. May asset of this singular character, which Congress by the mandatory procedures of Section 302(c)(5) of the Act took special pains to segregate from assets of the contracting union in order to create a "perfectly definite fund" and not a "war chest" for the union, be subjected to employer claims in this manner?[12]

We find no reported decision in which this question or a similar question has been determined. We submit, however, that the answer may be found in the will of Congress as expressed in the Labor Management Relations Act, 1947.

Section 301(b) of the Act provides in part:

> ". . . Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States *shall be enforceable only against the organization*

[12] In discussing what was to become Section 302(c) of the Act, its sponsor, Senator Taft, stated:

> "*The purpose of the provision is that the welfare fund shall be a perfectly definite fund*, that its purposes shall be stated so that each employee can know what he is entitled to, can go to court and enforce his rights in the fund, and that it shall not be, therefore, in the sole discretion of the union or the union leaders and usable for any purpose which they may think is to the advantage of the union or the employee . . . The tendency is to demand a welfare fund as much in the power of the union as possible. Certainly unless we impose such restrictions we shall find that the welfare fund will become merely a war chest for the particular union . . . ." 93 Cong. Rec. 4746-7 (1947). (Emphasis supplied.)

as an entity and against its assets, and shall not be enforceable against any individual member or his assets." (Emphasis supplied.)

In the instant case the recovery of unpaid royalties by the Trustees is conditioned upon, and postponed until the UMW and District 28's payment of a money judgment to be entered against them upon assessment of damages at a new trial. If, under Section 301(b), the judgment debtors are unable to discharge the money judgment, the effect of such conditional judgment results in satisfaction of the money judgment against the labor organization, not out of its assets as Section 301(b) makes mandatory but by withholding from the Fund moneys found due the Fund. The same result would follow, and even more clearly, if the doctrine approved by the Court of Appeals were applied in a case where an employer invoked the principle of set-off defensively but without the union's being made a party litigant. In such case, Trustees' recovery would be reduced by any damages proven, even though judgment would not be rendered against the absent union.

We recognize that the specific situation Congress had in mind in enacting the limitation in Section 301(b) which is material in this action was to eliminate the possibility of satisfying a judgment against a labor organization out of the assets of its members as so nearly occurred in the *Danbury Hatters* case.[13] We insist, however, that a Congressional intention in-

[13] *Loewe* v. *Lawlor*, 208 U. S. 274; and *Lawlor* v. *Loewe*, 235 U. S. 522. See also comments of Senator Case, 93 Cong. Rec. 6437-8 (1947); of Senator Taft, 93 Cong. Rec. 3955 (1947); and of Senator Ball, 93 Cong. Rec. 5146 and A2377.

consonant with the Court of Appeals' opinion is plainly evident in Section 301(b). That intention was to restrict responsibility for union acts to the union alone.

On a recent occasion this Court has recognized that "the aims and social policy [of the Act] . . . were drawn with broad strokes" and that "the details had to be filled in, to no small extent, by the judicial process." *San Diego Building Trades Council* v. *Garmon*, U. S. , 3 L. ed. 2d 775, 780. This Court in construing the equally sensitive problem of application of anti-trust legislation to organized labor emphasized the importance of giving " 'hospitable scope' to Congressional purpose even when meticulous words are lacking." *United States* v. *Hutcheson*, 312 U. S. 219. In that case it was said, p. 235:

> ". . . The appropriate way to read legislation in a situation like the one before us, was indicated by Mr. Justice Holmes on circuit: 'A statute may indicate or require as its justification a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur to the mind. The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed. The major premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before.' Johnson v. United States, (CCA 1st) 163 F. 30, 32, 18 L.R.A., (NS), 1194."

As elsewhere shown (*ante*, p. 21), if the subject of this suit were unpaid wages rather than unpaid

royalties, it is unthinkable that the employer could offset its claim for damages against the union against the employees' wage claims. We perceive no reason why the same reasoning should not apply here for the unpaid welfare contributions are closely analogous to the "uniquely personal right of the employee . . . to receive compensation for services rendered his employer." *Association of Westinghouse Salaried Employees* vs. *Westinghouse Electric Corp.*, 348 U. S. 437, 461, see concurring opinion of Mr. Chief Justice Warren; *United States* vs. *Carter*, 353 U. S. 210.

Trusts of the type represented by the Trustees in this action represent a social device comparatively new on the American scene. As an instrumentality through which the working man may receive a measure of protection from illness and old age, the potential of such trusts is inestimable. It has been judicially recognized that such trusts represent a device which deserves to be encouraged and protected. *Upholsterers' Inter. Union* v. *Leathercraft Furn. Co.*, D. C. E. D., Pa., 1949, 82 F. Supp. 570, 575. This was the spirit in which the Labor Management Relations Act undertook to regulate such trusts.

We submit that the construction placed upon this Act and upon the collective bargaining agreements here involved by the District Court and the Circuit Court of Appeals brings about a result which is wholly at variance with the Congressional intent in its enactment and is erroneous.

CONCLUSION

The Trustees respectfully submit that this action should be remanded with instructions to modify the judgment of the Court of Appeals to provide for the issuance of execution on the judgment awarded to the Trustees.

In the alternative the Trustees submit that the judgment of the Court of Appeals should be set aside and that the case be remanded for a new trial in accordance with this Court's determination of the questions of law involved.

Respectfully submitted,

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APPENDIX I

29 USC. Section 185

Suits by and against labor organizations—
Venue, amount and citizenship

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

* * *

29 USC. Section 186

Restrictions on payments to employee representatives; exceptions; penalties; jurisdiction; effective date; exception of cerain trust funds

"(a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

"(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

"(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of em-

ployees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities."